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*Co-Lead Counsel for Indirect-Purchaser Plaintiffs*

**UNITED STATES DISTRICT COURT  
 NORTHERN DISTRICT OF CALIFORNIA  
 OAKLAND DIVISION**

In re DYNAMIC RANDOM ACCESS  
 MEMORY (DRAM) ANTITRUST  
 LITIGATION

Case No. M-02-1486-PJH  
 MDL No. 1486

This Document Relates to:  
 ALL INDIRECT PURCHASER ACTIONS  
 and  
*Petro Computer Systems, Inc. v. Hitachi, Ltd.*  
*Petro Computer Systems, Inc. v. Mitsubishi*  
*Electric Corporation, et. al.*  
*Petro Computer Systems, Inc. v. Toshiba*  
*Corporation, et. al.*

**DECLARATION OF TRACY R.  
 KIRKHAM IN SUPPORT OF INDIRECT  
 PURCHASER PLAINTIFFS' REPORT TO  
 THE COURT AND MOTION FOR AN  
 ORDER DIRECTING DISPOSITION OF  
 THE RESIDUAL IN THE LARGE-  
 CLAIMANT DISTRIBUTION FUND**

Date: September 22, 2022  
 Time: 1:30 p.m.  
 Courtroom: 3, 3rd Floor  
 Judge: Hon. Phyllis J. Hamilton

Case No. C 12-5213 PJH  
 Case No. C 12-5214 PJH  
 Case No. C 12-5215 PJH

1 I, Tracy R. Kirkham, declare as follows:

2 1. I am a member in good standing of the State Bar of California, and licensed to  
3 practice in the states of California, Pennsylvania, and New Jersey. I am the managing partner at  
4 Cooper & Kirkham, P.C., one of the Co-Lead Counsel in this litigation. As such, I have  
5 participated in all aspects of the management of the funds paid into escrow by the Defendants,  
6 including working with Rust Consulting (“Rust”), the Fund Administrator, and Huntington Bank,  
7 the Escrow and Distribution Agent, in the preparation of an accounting of the escrowed funds as of  
8 August 15, 2022. I make this Declaration in Support of Indirect Purchaser Plaintiffs’ Report to the  
9 Court and Motion for an Order Directing the Disposition of the Residual in the Large-Claimant  
10 Distribution Fund, filed herewith. I make this Declaration from my personal knowledge and, if  
11 called as a witness, I could and would testify competently to the facts set forth herein.

12 2. After all distribution efforts to Small-Claimants were exhausted, there remained a  
13 residual of uncashed Small-Claimant checks in escrow, amounting to \$2,053,004.46. On May 21,  
14 2021, this Court granted a joint motion filed by Indirect Purchaser Plaintiffs’ and the Attorneys  
15 General, and directed a *cy pres* payment of the total Small-Claimant distribution residual to the  
16 Toys for Tots Foundation to provide technology related gifts to underserved children throughout  
17 the United States. Dkt. 2355. Under the supervision of my office and the California Attorney  
18 General’s office, the funds were disbursed to Toys for Tots in September 2021 and used to  
19 purchase more than 20,000 Amazon Fire – Kids Edition tablets that were distributed during the  
20 2021 Toys for Tots holiday toy distribution to disadvantaged children in all 50 states, the District  
21 of Columbia, Puerto Rico, Guam and the Virgin Islands in accordance with this Court’s Order and  
22 the plan for the *cy pres* distribution agreed to by Plaintiffs and the Attorneys’ General. Attached  
23 hereto as Exhibit 1 is a Toys for Tots report describing the purchase and distribution of the tablets.  
24 Currently, there are no funds remaining in escrow that had been designated for Small-Claimants.

25 3. In August 2021, Rust issued wire payments and distributed checks with an initial  
26 45-day void period to the Late Large Claimants and on-time Large Claimants. Co-Lead Counsel  
27 continued to work with Rust throughout the remainder of 2021 to diligently monitor, investigate  
28 and process any outstanding wire payments or uncashed checks beyond the 45-day void period.

1 As of December 20, 2021, no additional checks were clearing and Rust stopped honoring checks  
2 after January 14, 2022. The claims website and call center have been shut down.

3 4. Of the funds distributed in 2021 to Late Large Claimants and on-time Large  
4 Claimants, Rust and Huntington Bank report that as of August 15, 2022, the current balance in the  
5 Large-Claimant fund is \$114,738.23, as a result of uncashed checks.

6 5. Further individual distributions to Large Claimants who have already received one  
7 or more payments would be of questionable value here because a further round of individual  
8 distributions will likely result in the creation of another residual that would then have to be dealt  
9 with by Co-Lead Counsel and this Court. In my experience over the last 30 years, the smaller the  
10 amount of a distribution check, the more likely it is to go uncashed. The costs of printing and  
11 mailing another distribution, and the additional fees and costs associated with keeping the  
12 settlement fund account open and paying Rust to administer another distribution essentially ensure  
13 that even if the amount of the checks exceeds the costs associated with creating and distribution  
14 them, most, if not all, distribution checks would be exceedingly small. I do not believe that a  
15 further distribution of the residual in the Large-Claimant distribution fund would be a cost-  
16 effective or efficacious means of wrapping up this litigation.

17 6. Attached hereto as Exhibit 2 is a final accounting as of April 15, 2022, prepared by  
18 Rust of the second Large-Claimant distribution and the amount of funds paid to Toys for Tots. As  
19 of August 15, 2022, as confirmed by Liz Lambert, Senior Managing Director of the National  
20 Settlement Team, at escrow agent, Huntington National Bank, the Large-Claimant distribution  
21 account is \$0.45 lower than the amount shown on Exhibit 2. Given the *de minimus* delta between  
22 Rust's April accounting and Huntington Bank's current balance, Plaintiffs have not pursued the  
23 reason for the discrepancy.

24 7. Rust has reported to Co-Lead Counsel that it will incur additional costs of  
25 approximately \$2,500 to pay final anticipated banking and tax reporting expenses for 2022.  
26 Plaintiffs' request this Court to authorize this payment to Rust. Although \$2,500 is an estimate of  
27 Rust's costs to close the settlement fund, in my experience Rust's estimates are generally accurate.  
28 Further, Rust has agreed to accept \$2,500 as full payment for all future efforts, even if its actual

1 time and expenses are greater. Accordingly, rather than establish a reserve in this amount for the  
 2 payment of Rust's expenses, which will prolong the escrow and require a future accounting to this  
 3 Court, Co-Lead Counsel believe that the most efficient and cost-effect way to proceed is to  
 4 authorize the payment of the full amount of the estimate to Rust.

5 8. Paying Rust's final expenses will leave a residual of \$112,238.68 remaining in the  
 6 Large-Claimant distribution fund. Co-Lead Counsel request the Court to award them the full  
 7 residual as attorneys' fees for the six years since the May 19, 2016 Distribution Order, that  
 8 Counsel have worked on this matter without compensation. This award to Co-Lead Counsel  
 9 would represent only a fraction of the value of the services rendered at the usual hourly rates of the  
 10 relevant attorneys during the time the services were rendered.

11 9. For example, during the last 6 years, Co-Lead Counsel Cooper & Kirkham alone  
 12 invested approximately 1056 attorney-hours and modest expenses in supervising the escrow and  
 13 distribution of the settlement funds to claimants, dealing with Mosel's counsel to collect the  
 14 settlement payments, negotiating with the Attorneys General to resolve a dispute as to the  
 15 appropriate disposition of the Small-Claimant residual, evaluating and selecting Toys for Tots as  
 16 the *cy pres* recipient, obtaining authorization to make a supplemental distribution to Large-  
 17 Claimants, resolving a dispute with counsel for certain Late Large Claimants, and supervising the  
 18 Large-Claimant second distribution. At historical hourly rates, Cooper & Kirkham's work alone  
 19 represents a lodestar value of over \$750,000.

20 10. In addition to preparing the current Motion, the tasks undertaken by Co-Lead  
 21 Counsel during the last six years include:

- 22 - Monitoring the initial distribution of settlement funds to Small-Claimants and  
 23 Large-Claimants;
- 24 - Preparing and filing various motions and reports to the court regarding the  
 25 distribution, of funds to Small-Claimants, Late Large-Claimants and on-time  
 26 Large-Claimants (See, Dkts. 2296, 2352, 2353)'
- 27 - Researching the issue of whether the uncashed Small-Claimant check residual  
 28 should escheat to the treasuries of their respective states of residency, as  
 advocated by some Attorneys General, and negotiating with the Attorneys  
 General to resolve the issue in favor of a *cy pres* distribution for the benefit of  
 consumers;

- Working with the Attorneys General to prepare and present a *cy pres* plan and to identify and vet a recipient for distribution of the \$2 million residual in the Small-Claimant consumer fund to Toys for Tots, including development of an equitable calculation of designated *cy pres* funds across 54 state and territorial jurisdictions;
- Monitoring, encouraging adherence and collecting monies pursuant to the Mosel settlement payment plan and developing a plan to distribute such funds directly to Late Large-Claimants and on-time Large-Claimants;
- Working with Rust to help resolve distribution issues such as improperly audited claims and to reduce the quantity of uncashed check balances; and
- Monitoring the escrow and distribution accounts.

11. Further, in order to obtain agreement on a *cy pres* distribution from the Attorneys General who were advocating escheat to their state treasuries for the approximately \$2 million residual in the Small-Claimant distribution fund, Co-Lead Counsel agreed that they would waive any ability to make a request to this Court for an attorneys' fee award from the Small-Claimant residual.

I declare under penalty of perjury that the foregoing is true and correct. Executed this 15th day of August, 2022, in San Francisco, California.

/s/ Tracy R. Kirkham  
Tracy R. Kirkham

# **EXHIBIT 1**



# Delivering Hope since 1947

## The 2021 Marine Toys for Tots Holiday Campaign Delivered **22.4 Million Toys** to **8.7 Million less fortunate Children**

### Marine Toys for Tots Program

Created in 1947 and expanded nationwide in 1948, the U.S. Marine Corps Reserve Toys for Tots Program is an official activity of the U.S. Marine Corps and the Marine Corps' premier community action program. **From 1947-2021, U.S. Marines and volunteers distributed 627 million toys to over 281 million less fortunate children.** Today, Toys for Tots is our Nation's flagship Christmas charitable cause with local Toys for Tots campaigns conducted from October through December each year in over 800 communities throughout the country.

### Goals and Objectives

- Deliver a message of hope to less fortunate children at Christmas, during disaster recovery, and other communities in need of emotional support
- Restore / build self-esteem and self-confidence
- Inspire youngsters to grow into responsible, productive, patriotic citizens
- Unite members of local communities

### 2021 Accomplishments

- **Distributed 22.4 million toys to 8.7 million children**
- **Foundation Supplemented local campaigns with 10 million toys valued at over \$81 million**
- **Distributed 1 million toys, books, and games to COVID impacted families in Spring & Summer**
- **Distributed over 3 million books through the Toys for Tots Literacy Program**
- **Distributed toys to over 186,000 children through the Toys for Tots Native American Program**
- **Distributed toys to 17,000 Afghanistan refugee children**
- **Unmodified opinion** by independent auditor
- Achieved a **97:3 Program to Support Ratio**
- **Continue to meet all 20 standards** of Better Business Wise Giving Alliance
- **Charity Navigator 4-Star Rating**
- Rang **Closing Bell** at New York Stock Exchange

### Impact of DRAM Cy Pres Distribution

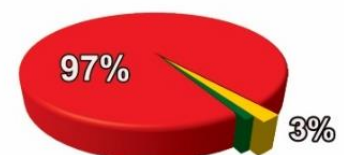
2021 was a banner year for Toys for Tots. Marines and volunteers in all 50 states, DC, Puerto Rico, Guam and the Virgin Islands distributed 22.4 million toys to 8.7 million less fortunate children. The success in reaching so many children is due to the hard work of our Marines and volunteers, the generosity of the American public, and support received from our Corporate Partners. As good as our Marines are at raising toys locally, they fall far short on toys compared to the number of children they are attempting to support. Help from our Corporate Partners allows the Marine Toys for Tots Foundation to purchase and augment our 832 local toy drives with millions of toys throughout the holidays allowing the program to support every family seeking holiday help. Among our partners were all **State Attorneys General granting a joint motion directing a Cy Pres distribution to the Marine Toys for Tots Foundation in an amount exceeding \$2 million.** These funds were **used to purchase over 20,000 tablets** that were distributed to disadvantaged children in **all 50 states, DC, Puerto Rico and the Virgin Islands** in accordance with the Cy Pres distribution order.

The distribution of these **STEM gifts directly impacted over 20,000 economically disadvantaged children** in all 50 states, DC, Puerto Rico and the Virgin Islands. The gifts to these children not only let them know they were not forgotten during the holidays, they also represented hope and will contribute to the educational development and instilling self-esteem ultimately helping to break the cycle of living in poverty.


On behalf of the Marine Toys for Tots Foundation, the U.S. Marine Corps and the less fortunate children nationwide, we thank all of the Attorneys General for choosing Toys for Tots to receive the Cy Pres distribution.

### Fund Expenditure 97:3 Program to Support Ratio

Program	96.7%
Fundraising	2.9%
Overhead	0.4%







Amazon - Fire 7 Kids - 7" Tablet - ages 3-7 - 16GB - Pink

Model: B07H8ZCSL9 SKU: 6351415

Color: Pink

Price Match Guarantee  
**\$99.99**

Add to Cart

★★★★★ (2,965)

Get it today

Pickup: Available today at Apple Valley  
Act Fast - Only 2 left at your store!

Help

The Marine Toys for Tots Foundation purchased 20,114 of the above tablets and distributed these tech toys to local Toys for Tots Chapters in all 50 states, DC, Guam, Puerto Rico and the Virgin Islands. The tablets were delivered to local Toys for Tots chapters in numbers commensurate with the allocated dollar amounts indicated in the DRAM Order (below).

State / Territory	Cy Pres Allocation				
Alaska	\$4,442.70	Louisiana	\$23,086.03	Oklahoma	\$24,607.31
Alabama	\$29,399.02	Massachusetts	\$43,831.65	Oregon	\$34,412.46
Arkansas	\$19,021.09	Maryland	\$36,896.60	Pennsylvania	\$71,261.84
Arizona	\$45,812.79	Maine	\$14,251.96	Puerto Rico	\$69.80
California	\$292,965.79	Michigan	\$51,333.32	Rhode Island	\$9,150.24
Colorado	\$40,240.94	Minnesota	\$25,139.04	South Carolina	\$28,019.41
Connecticut	\$20,213.88	Missouri	\$39,378.68	South Dakota	\$5,124.30
District of Columbia	\$6,198.02	Mississippi	\$19,195.59	Tennessee	\$38,619.07
Delaware	\$6,838.56	Montana	\$5,368.61	Texas	\$157,017.89
Florida	\$164,213.67	North Carolina	\$55,192.97	Utah	\$10,470.32
Georgia	\$68,804.39	North Dakota	\$2,980.96	Virginia	\$55,273.04
Hawaii	\$14,097.98	Nebraska	\$9,589.58	Virgin Islands	\$149.87
Iowa	\$16,658.08	New Hampshire	\$11,790.40	Vermont	\$4,280.51
Idaho	\$7,889.70	New Jersey	\$64,357.58	Washington	\$53,887.26
Illinois	\$71,528.73	New Mexico	\$9,269.32	Wisconsin	\$26,760.91
Indiana	\$41,538.44	Nevada	\$31,796.93	West Virginia	\$8,895.67
Kansas	\$14,442.89	New York	\$118,951.08	Wyoming	\$2,826.99
Kentucky	\$27,947.55	Ohio	\$67,513.05	<b>TOTALS</b>	<b>\$2,053,004.46</b>

The tablets were then distributed to families with children through the normal Toys for Tots holiday toy distribution within each of those communities.





Date: 9/21/2021  
Amount: \$2,056,287.73



Bill To:	Ship To:
Mike Stuckey Marine Toys for Tots Foundation 18251 Quantico Gateway Drive Triangle, VA 22172	Toys for Tots Campaigns on below invoices

## INVOICE DETAIL

Qty	SKU	Manufacturer Name	Manufacturer Number	Description	Rate/Price	Extended Amount
20,114	BB21248730			Amazon Fire 7- Kids Edition 9th generation tablet	\$99.99	\$2,011,198.86
				Shipping		\$45,088.87
Total:						\$2,056,287.73

Product:	\$2,011,198.86
Shipping:	\$45,088.87
<b>Total:</b>	<b>\$2,056,287.73</b>



## **EXHIBIT 2**

**DRAM Indirect**

Project Number 8291

**Final Accounting for the Court as of 4/15/2022****FINAL PROJECT ACCOUNTING**

Toll Free Number: 1-800-589-1425

Address: DRAM Claims - 8291, PO BOX 8097, Faribault, MN 55021-9497

**Large Claimant Supplemental Distribution**

<b>Description</b>	<b>Date</b>	<b>Amount</b>
Starting Balance - Mosel funds	May, 2021	\$1,326,428.55
Balance with uncashed incentive awards	August, 2021	\$1,349,428.55
Administrative Fees Paid to Rust Consulting	August, 2021	(\$48,000.00)
Amount to distribute	August, 2021	\$1,301,428.55
All cleared checks including reissues (1,897)	August-November, 2021	(\$697,742.00)
All wires (12)	August-November, 2021	(\$488,947.87)
<b>Uncashed Check Totals:</b>		<b>\$114,738.68</b>

**Small Claimant Supplemental Distribution**

<b>Description</b>	<b>Date</b>	<b>Amount</b>
Toys for Tots Foundation	September, 2021	\$2,053,044.46